

No. _____

75-873 SEP 20 1975

**In The
Supreme Court of the United States**

**MARINE FORESTS SOCIETY and
RODOLPHE STREICHENBERGER,**

Petitioners,

v.

CALIFORNIA COASTAL COMMISSION,

Respondent.

**On Petition For A Writ Of Certiorari
To The California Supreme Court**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

May a state supreme court suddenly and arbitrarily change state law, unpredictable in terms of relevant precedents, so as to allow the state to defeat the constitutional protection against taking property without payment of just compensation and without due process of law or has a federal issue arisen making the exercise of this Court's review power necessary?

PARTIES TO THE PROCEEDINGS

The parties to the proceedings are the petitioners Marine Forests Society and its founder and president Rodolphe Streichenberger (Marine Forests) and the respondent California Coastal Commission (Coastal Commission or Commission).

Petitioner Marine Forests is a nonprofit organization whose purpose is to conduct experimental research on creating new or replacing lost marine habitat. The organization's objective is to discover economically viable techniques that facilitate the creation of large-scale marine forests where seaweed and shellfish can grow on sandy ocean bottoms and attract fish. App. A at 6.

The California Coastal Commission is a California state agency created by the California Coastal Act of 1976 (Coastal Act or Act). The Act is a very lengthy and comprehensive statutory scheme aimed at protecting the coastal zone. The Commission is the entity charged with the primary responsibility for the implementation of the provisions of the Coastal Act. App. A at 12.

CORPORATE DISCLOSURE STATEMENT

Petitioner Marine Forests Society is a nonprofit corporation. As a nonprofit corporation, the Marine Forests Society has no parent corporation or stock owned by any publicly held company.

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OPINIONS BELOW

The June 23, 2005 opinion of the California Supreme Court was reported as *Marine Forests Society, et al. v. California Coastal Commission, et al.*, Case No. S113466. The entire opinion appears as Appendix A to this Petition.¹ It is also reported at *Marine Forests Society, et al. v. California Coastal Commission, et al.*, 36 Cal. 4th 1, 113 P.3d 1062 (2005). The opinion issued on December 30, 2002, by the California Court of Appeal, Third Appellate District, was reported as *Marine Forests Society, et al. v. California Coastal Commission, et al.*, Case No. C038753. The entire opinion appears as App. B to this Petition. The court of appeal's entire ruling on rehearing appears as App. C to this Petition. The Sacramento County Superior Court's decision in case number 00AS00567 issued on May 8, 2001, is included as Exhibit 1 to App. G.

JURISDICTION

The California Supreme Court issued its opinion on June 23, 2005. App. A at 1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS AND STATUTE AT ISSUE

The Fifth Amendment to the United States Constitution provides:

¹ All further references to appendices hereto are shown as App.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, ***nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.***

(Emphasis added.)

The Fourteenth Amendment, § 1, to the United States Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; ***nor shall any State deprive any person of life, liberty, or property, without due process of law;*** nor deny to any person within its jurisdiction the equal protection of the laws.

(Emphasis added.)

The California Constitution Separation of Powers Clause provides: "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." Cal. Const. art. III, § 3.

In California, a quo warranto proceeding is governed by California Code of Civil Procedure § 803, which provides:

An action may be brought by the attorney-general, in the name of the people of this state, upon his own information, or upon a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise, or against any corporation, either de jure or de facto, which usurps, intrudes into, or unlawfully holds or exercises any franchise, within this state. And the attorney-general must bring the action, whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the governor.

(Emphasis added.)

STATEMENT OF THE CASE

A. Procedural Background

The California Coastal Commission is the "state coastal zone planning and management agency" with primary responsibility for implementing the California Coastal Act of 1976. It consists of 12 voting members, 4 appointed by the governor and 8 appointed by the legislature. Prior to 2003, all members served two-year terms at the pleasure of their appointing authorities. The Commission acts by a majority vote of its appointed members. App. B at 88.